

1 Adam M. Romney (SBN 261974)
2 Susan M. Benson (SBN 146837) (*Of Counsel*)
3 Jordan B. Everakes (SBN 251371)
4 GROTEFELD HOFFMANN LLP
5 5535 Balboa Blvd., Ste. 219
6 Encino, California 91316
7 Telephone: (747) 233-7150
8 Facsimile: (747) 233-7143

9 William J. Hoffmann (*pro hac vice to be filed*)
10 GROTEFELD HOFFMANN LLP
11 407 South Third Street, Suite 200
12 Geneva, Illinois 60134
13 Telephone: (312) 551-0200
14 Facsimile: (630) 262-5023

15 Attorneys for Plaintiffs

16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATE DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

STATE FARM MUTUAL)	Case No.: 8:23-cv-00981
AUTOMOBILE INSURANCE)	
COMPANY; STATE FARM FIRE)	
AND CASUALTY COMPANY;)	COMPLAINT FOR DAMAGES
STATE FARM GUARANTY)	AND INJUNCTIVE RELIEF
INSURANCE COMPANY; STATE)	
FARM INDEMNITY COMPANY;)	DEMAND FOR JURY TRIAL
STATE FARM COUNTY MUTUAL)	
INSURANCE COMPANY OF)	
TEXAS; STATE FARM GENERAL)	
INSURANCE COMPANY; HIROAD)	
ASSURANCE COMPANY;)	
GAINSCO, INC.;)	
)	
Plaintiffs,)	
)	
vs.)	
)	

HYUNDAI MOTOR AMERICA,)
 HYUNDAI MOTOR COMPANY, KIA)
 AMERICA, INC., KIA)
 CORPORATION;)
)
 Defendants.)
)

NOW COMES Plaintiffs **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; STATE FARM FIRE AND CASUALTY COMPANY; STATE FARM GUARANTY INSURANCE COMPANY; STATE FARM INDEMNITY COMPANY; STATE FARM COUNTY MUTUAL INSURANCE COMPANY OF TEXAS; STATE FARM GENERAL INSURANCE COMPANY; HI-ROAD ASSURANCE COMPANY; GAINSCO, INC.** (hereinafter collectively referred to as “Plaintiffs and/or STATE FARM”) by and through their attorneys GROTEFELD HOFFMANN, LLP and for their Complaint against all named Defendants, alleges that at all relevant times herein on information and belief as follows:

THE PARTIES

1. Plaintiff, **State Farm Mutual Automobile Insurance Company**, at all pertinent times herein, is a corporation organized and existing under the laws of the State of Illinois, with a principal place of business located at One State Farm Plaza, Bloomington, Illinois 61710 and which, at all times material hereto was engaged in the business of issuing policies of insurance. This entity sues in its own name and on behalf of various wholly owned subsidiaries/entities to be identified at a later time.

2. Plaintiff, **State Farm Fire and Casualty Company**, at all pertinent times herein, is a corporation organized and existing under the laws of the State of

1 Illinois, with a principal place of business located at One State Farm Plaza,
2 Bloomington, Illinois 61710 and which, at all times material hereto was engaged
3 in the business of issuing policies of insurance.

4 3. Plaintiff, **State Farm Guaranty Insurance Company**, at all
5 pertinent times herein, is a corporation organized and existing under the laws of
6 the State of Illinois and which, at all times material hereto was engaged in the
7 business of issuing policies of insurance.

8 4. Plaintiff, **State Farm Indemnity Company**, at all pertinent times
9 herein, is a corporation organized and existing under the laws of the State of Illinois
10 and which, at all times material hereto was engaged in the business of issuing
11 policies of insurance.

12 5. Plaintiff, **State Farm County Mutual Insurance Company of**
13 **Texas**, at all pertinent times herein, is a corporation organized and existing in the
14 state of Texas and has a principal place of business in Texas and which, at all times
15 material hereto was engaged in the business of issuing policies of insurance.

16 6. Plaintiff, **State Farm General Insurance Company**, at all pertinent
17 times herein, is a corporation organized and existing under the laws of the State of
18 Illinois, with a principal place of business located at One State Farm Plaza,
19 Bloomington, Illinois 61710 and which, at all times material hereto was engaged
20 in the business of issuing policies of insurance.

21 7. Plaintiff, **HiRoad Assurance Company**, at all pertinent times
22 herein, is a corporation organized and existing under the laws of the State of
23 Illinois, with a principal place of business in Illinois, at all times material hereto
24 was engaged in the business of issuing policies of insurance.

25 8. Plaintiff, **GAINSCO, Inc.**, at all pertinent times herein, is a
26 corporation organized and existing in the state of Texas and has a principal place
27 of business in Texas and which, at all times material hereto was engaged in the
28

1 business of issuing policies of insurance.

2 9. Defendant **Hyundai Motor America** (“HMA”) is a California
3 corporation with its principal place of business located at 10550 Talbert Avenue,
4 Fountain Valley, CA 92708. HMA engages in business throughout the United
5 States, including in this judicial district.

6 10. Defendant **Hyundai Motor Company** (“HMC”) is a South Korean
7 corporation. HMC is the parent corporation of HMA.

8 11. Defendant HMC, through its various related corporate entities and
9 subsidiaries, designs, manufactures, assembles, markets, distributes and sells
10 Hyundai automobiles in this judicial district and multiple other locations in the
11 United States.

12 12. Defendant HMA is HMC’s U.S. sales and marketing division, and it
13 manages and oversees the sales and other operations of HMC across the United
14 States. HMA distributes Hyundai vehicles and sells these vehicles through its
15 network of dealerships. Money received from the purchase or lease of a Hyundai
16 vehicle from a dealership flows from the dealer to HMC and HMA.

17 13. Upon information and belief, Defendant HMC and Defendant HMA
18 work cooperatively and communicate with each other on all aspects of the Hyundai
19 products which HMC and HMA distribute and sell within the United States.

20 14. Upon information and belief, Defendant HMA and Defendant HMC
21 cooperate and jointly make all decisions regarding the distribution, service, repair,
22 installation, and incorporation of anti-theft and other safety devices and designed
23 components, including any decisions relating to the failure to provide such
24 protections and anti-theft devices in Hyundai vehicles, as they relate to the defect
25 in the Hyundai vehicles addressed in this action.

26 15. Upon information and belief, Defendants HMA and HMC
27 cooperated and jointly developed all pertinent marketing materials regarding the
28

1 differences between trim packages and warranty booklets sold and distributed with
2 the Hyundai vehicles that are the subject of this action.

3 16. Upon information and belief, Hyundai dealers sold certain 2011-
4 2022 Hyundai vehicles equipped with traditional ‘insert-and-turn’ steel key
5 ignition systems (hereinafter the “Subject Vehicles”).

6 17. Upon information and belief, the Hyundai dealers that sold the
7 Subject Vehicles to Plaintiffs’ insureds are expressly authorized by HMA and
8 HMC to offer express warranties to purchasers of Hyundai vehicles, directly from
9 HMA and HMC.

10 18. The Hyundai dealers that sold Subject Vehicles to Plaintiffs’ insureds
11 were acting as HMA and HMC’s agents with actual and apparent authority in
12 selling the Subject Vehicles to Plaintiffs’ insureds.

13 19. Defendant **Kia America, Inc.** (“KA”) (formerly Kia Motors
14 America, Inc.) is a California corporation with its principal place of business at
15 111 Peter Canyon Rd., Irvine, CA 92606. KA engages in continuous and
16 substantial business throughout the United States, including in this judicial district.

17 20. Defendant **Kia Corporation** (“KC”) is a South Korean corporation.
18 KC is the parent corporation of KA.

19 21. Defendant KA is an automobile design, manufacturing, distribution,
20 and service corporation doing business within the United States. Furthermore,
21 Defendant KA designs, develops, manufactures, distributes, markets, sells, leases,
22 warrants, services, and repairs passenger vehicles, including certain 2011-2022 Kia
23 vehicles (hereinafter included in the term “Subject Vehicles”) equipped with
24 traditional ‘insert-and-turn’ steel key ignition systems.”

25 22. Defendant KA is KC’s U.S. sales and marketing division, and it
26 manages and oversees sales and other operations of KC across the United States.
27 KA distributes Kia vehicles and sells these vehicles through its network of
28

1 dealerships. Money received from the purchase or lease of a Kia vehicle from a
2 dealership flows from the dealer to KC and KA.

3 23. Upon information and belief, Defendant KC and Defendant KA
4 cooperate and jointly make all decisions regarding the distribution, service, repair,
5 installation, and incorporation of anti-theft and other safety devices and designed
6 components, including any decisions relating to the failure to provide such
7 protections and anti-theft devices in Kia vehicles, as they relate to the defect in the
8 Kia vehicles at issue in this action.

9 24. Upon information and belief, Defendants KA and KC cooperated and
10 jointly developed all pertinent marketing materials regarding the differences
11 between trim packages and warranty booklets for the Kia vehicles that are the
12 subject of this action.

13 25. Upon information and belief, Defendant KC and Defendant KA work
14 cooperatively and communicate with each other on all aspects of the Kia products
15 which KC and KA distribute and sell within the United States.

16 26. Upon information and belief, the Kia dealers that sold Subject
17 Vehicles to Plaintiffs' insureds hold themselves out, with KA and KC's express
18 and implied permission, as associated with KA and KC to sell KA and KC's
19 vehicles on KA and KC's behalf.

20 27. For instance, the Kia dealers that sold the Subject Vehicles to
21 Plaintiffs' insureds are expressly authorized by KA and KC to offer express
22 warranties to purchasers of Kia vehicles, directly from KA and KC.

23 28. The Kia dealers that sold Subject Vehicles to Plaintiffs' insureds
24 were acting as KA and KC's agents with actual and apparent authority in selling
25 the Subject Vehicles to Plaintiffs' insureds.

26 29. As of the end of 2021, KC's largest shareholder is HMC, which holds
27 33.88 percent of KC's stock.
28

1 30. HMA and HMC are collectively referred to in this complaint as
2 “Hyundai” unless identified separately.

3 31. KA and KC are collectively referred to in this complaint as “Kia”
4 unless identified separately.

5 32. HMA, HMC, KA, and KC are collectively referred to in this
6 complaint as “Defendants” unless identified separately.

7
8 **JURISDICTION AND VENUE**

9 33. The Court has general personal jurisdiction over Defendants because
10 they conduct substantial business in California, and they intentionally and
11 purposefully placed the Subject Vehicles into the stream of commerce within
12 California and elsewhere in the United States. Further, HMA and KA are
13 headquartered in California.

14 34. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
15 1332(a)(1) as the amount in controversy exceeds this Court’s jurisdiction,
16 exclusive of interest and costs, the Plaintiffs are entities of a state different from
17 each of the named defendants.

18 35. This Court also has subject matter jurisdiction pursuant to 28 U.S.C.
19 § 1332(a) as the Plaintiffs are domiciled in different states than all Defendants and
20 the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

21 36. Venue is proper in this judicial district pursuant to 28 U.S.C. §
22 1391(b), as all defendants do substantial business in this judicial district, including
23 the selling of the vehicles at issue.

24
25 **FACTUAL ALLEGATIONS**

26 37. Between 2011 and 2022, Defendants sold vehicles equipped with
27 traditional ‘insert-and-turn’ steel key ignition systems, and without immobilizers
28

1 that, when properly designed and installed, have been proven to deter auto theft.
2 Unlike other manufacturers, the Subject Vehicles manufactured by the Defendants
3 are not equipped with an “immobilizer,” or any other comparable anti-theft feature
4 or design element that will prevent the car from being started, driven forward, and
5 steered. This security vulnerability makes the Defendants’ vehicles dangerously
6 easy to steal.

7 38. Effective July 28, 2010, the U.S. Department of Transportation,
8 National Highway Traffic Safety Administration, adopted and enacted Federal
9 Motor Vehicle Safety Standard (“FMVSS”) 114, which states: “The purpose of this
10 standard is to decrease the likelihood that a vehicle is stolen ... This standard
11 applies to passenger cars ...,” which required vehicle manufactures to incorporate
12 anti-theft security features within vehicles distributed and sold in the U.S.

13 39. Electronic transmitters and receivers called “immobilizers” are
14 utilized to comply with the United States’ regulatory requirements to prevent the
15 theft of vehicles by nearly all vehicle manufacturers within the U.S. and
16 worldwide, as a standard within the industry. Immobilizers, as incorporated and
17 designed by other vehicle manufactures, have been proven to deter auto theft.

18 40. Immobilizers are security, and specifically anti-theft, devices
19 installed within vehicles and in relation to the engine that contain a receiver.
20 Immobilizers prevent activation and forward self-mobility of vehicles if the
21 receiver does not detect a corresponding, paired transponder, which is located in
22 the vehicle’s key. If the receiver within the immobilizer does not detect the
23 transponder within the vehicle’s key nearby, the engine will not start, and the
24 vehicle will not achieve forward self-mobility, even if the ignition is turned.

25 41. The United States does not specifically require the use of
26 immobilizers. Rather, immobilizers are one method, as adopted by many
27 manufacturers as an industry standard, to comply with the requirements of FMVSS
28

1 114. The National Highway Traffic Safety Administration (NHTSA) has issued an
2 opinion letter confirming that vehicles with immobilizers satisfy FMVSS 114
3 because the immobilizer prevents the normal activation of the vehicle's engine and
4 forward self-mobility of the vehicle when the vehicle's key is removed. U.S. Nat'l
5 Highway Traffic Safety Admin., Opinion Letter (Sept. 24, 2004),
6 <https://www.nhtsa.gov/interpretations/gf005229-2>.

7 42. Even if a vehicle does not contain an immobilizer, it must still
8 comply with the requirements of Federal Motor Vehicle Safety Standard 114.
9 Although a lack of an immobilizer alone does not violate FMVSS 114, vehicles
10 must incorporate sufficient anti-theft features or design elements that meet the
11 minimum standards defined by FMVSS 114.

12 43. In the United States, immobilizers have become an industry standard
13 anti-theft protection device, and nearly all of Defendants' major competitors
14 include immobilizers as standard anti-theft technology in their vehicles to comply
15 with FMVSS 114.

16 44. Kia and Hyundai have refused to include immobilizers as a standard
17 anti-theft technology across their entire line of vehicles. Although Kia and Hyundai
18 included immobilizers as anti-theft protection in certain of their vehicles, they did
19 not provide purchasers of other vehicles, including the Subject Vehicles, with
20 either the anti-theft protection provided by immobilizers, or with other FMVSS
21 114-compliant anti-theft features or design elements, unless the consumers also
22 purchased expensive trim packages which included luxury features having nothing
23 to do with vehicle safety requirements; or, if anti-theft features or design elements
24 were provided, they failed to fulfill the functions or achieve the results required by
25 FMVSS 114.

26 45. Further, Kia and Hyundai did not include any other features or design
27 elements on the Subject Vehicles that would prevent those vehicles from being
28

1 easily stolen or otherwise bringing those vehicles into compliance with FMVSS
2 114.

3 46. In short, Kia and Hyundai have violated federal law by continually
4 selling certain vehicles without anti-theft protection sufficient to satisfy federal
5 regulations intended to protect life and property. In order for consumers to obtain
6 these protections in certain Kia and Hyundai vehicles, Kia and Hyundai forced the
7 consumer to pay thousands of dollars extra for trim packages which include anti-
8 theft protection. In so doing, Kia and Hyundai improperly made the inclusion of
9 anti-theft protection dependent upon the purchaser's ability to pay for luxurious
10 trim package features.

11 47. On information and belief, Defendants have long been aware of the
12 anti-theft benefits attendant to making immobilizers a standard feature on their
13 vehicles based on the immobilizer mandates of other countries in which Kia and
14 Hyundai sell their vehicles. In fact, Kia and Hyundai sell virtually identical
15 vehicles as the Subject Vehicles—*except equipped with immobilizers*—in other
16 countries with immobilizer requirements. Nevertheless, Kia and Hyundai have
17 failed to include as “standard” the same immobilizer technology for all vehicles
18 sold within the U.S. Nor have Kia and Hyundai equipped the Subject Vehicles with
19 any alternative anti-theft feature or design element that would comply with
20 FMVSS 114.

21 48. Given the ease with which the Subject Vehicles can be stolen, the
22 United States has experienced a marked increase in reported car thefts of the
23 Subject Vehicles.

24 49. In recent years, this trend has been accelerated by viral TikTok
25 videos and videos on other popular social media platforms revealing the lack of an
26 immobilizer in the Subject Vehicles, and further showing how to steal a Subject
27 Vehicle by doing nothing more than bypassing the key slot and turning the ignition
28

1 with a common USB cable (or any similarly shaped metal object) to start the
2 engine.¹

3 50. The viral videos offer step-by-step instructions on how to steal
4 Subject Vehicles and encourage viewers to steal Subject Vehicles as part of the
5 “Kia Challenge.” Videos created in response to the Kia Challenge show persons
6 stealing the Subject Vehicles and causing damage thereto. These incidents have
7 resulted in personal injuries, deaths and significant property damages related to the
8 thefts.

9 51. Additionally, when the Subject Vehicles are stolen due to the lack of
10 any anti-theft features or design elements sufficient to comply with FMVSS 114,
11 other property is often stolen and damaged in the process, such as any personal
12 property that may have been within the vehicles at the time of the theft.

13 52. By failing to equip the Subject Vehicles with sufficient anti-theft
14 features or design elements to prevent the theft of Subject Vehicles in the manner
15 described herein this pleading, the Defendants have violated federal law as the
16 Subject Vehicles fail to comply with Federal Motor Vehicle Safety Standard
17 (“FMVSS”) 114, which requires: “Each vehicle must have a starting system which,
18 whenever the key is removed from the starting system prevents: (a) The normal
19 activation of the vehicle’s engine or motor; and (b) Either steering, or forward self-
20 mobility, of the vehicle, or both.” 49 CFR § 16 571.114.

21 53. The Subject Vehicles do not comply with FMVSS 114 because the
22 Vehicles can be started by simply bypassing the key slot/starting system and using
23

24
25
26 ¹ Rob Stumpf, *How Thieves Are Stealing Hyundais and Kias with Just a USB*
27 *Cable*, DRIVE (Aug. 2, 2022, 3:28 PM), [https://www.thedrive.com/news/how](https://www.thedrive.com/news/how-thieves-arestealing-hyundais-and-kias-with-just-a-usb-cable)
28 *thieves-arestealing-hyundais-and-kias-with-just-a-usb-cable*; see also Joe Barrett,
Police, Car Owners Wrestle with Growing Thefts of Kias, Hyundais, WALL. ST. J.

1 a common USB cable (or any other similarly shaped object) to activate the engine
2 and achieve both forward self-mobility and steering. Upon information and belief,
3 at this point, the USB cable can be removed without deactivating the engine.

4 54. The Subject Vehicles do not contain starting systems with anti-theft
5 features or design elements that would prevent forward self-mobility and steering
6 when the key is removed from the starting system, as required by FMVSS 114.

7 55. Upon information and belief, the Defendants also made
8 representations on their vehicles and/or in product literature related to the vehicles
9 affirmatively representing that the vehicles conformed to all applicable USA
10 federal motor vehicle theft prevention standards in effect on the date of
11 manufacture, though this was not true.

12 56. If the Subject Vehicles had been manufactured in compliance with
13 FMVSS 114, as required under federal law, they would not have been stolen with
14 such frequency because, without a key, the engine would not start nor would
15 forward self-mobility or steering be achieved.

16 57. In marketing materials, Defendants often advertised that higher-end
17 trim packages came with a “push button start” feature rather than a traditional turn-
18 key ignition. However, Defendants did not inform consumers that the Subject
19 Vehicles were being sold without mandatory anti-theft protection required by the
20 federal government to safeguard life and property, whether in the form of an
21 immobilizer or otherwise.

22 58. When Defendants did disclose the lack of an immobilizer in lower-
23 end trim packages, the disclosure was often made in a detailed trim packages
24 comparison chart that consumers generally do not receive, read and/or understand.
25 Such disclosures merely listed “immobilizer” without explaining what it does, that
26 it is an anti-theft device intended to satisfy federal safety regulations, or that the
27 lack of an immobilizer greatly increased the risk of vehicle thefts.
28

59. Defendants long have known the anti-theft and security benefits offered by immobilizers, as is evidenced by the fact that Defendants have incorporated immobilizers as standard technology in select higher-end models and as a feature in higher-end trim packages on other models. Defendants have simply refused to meet the standard of care established by their competitors, which installed immobilizers as standard technology on all their vehicles.

60. Kia's knowledge of the efficacy of immobilizers in preventing vehicle theft is further evidenced by the fact that, as early as 2007, Kia sought to add an immobilizer to its Amanti model.² In petitioning the federal government for an exemption to certain parts-making requirements of the Theft Prevention Standard (49 C.F.R. part 51), Kia represented that immobilizers had reduced the rates of vehicle thefts on other vehicle models by between 58 and 80 percent.³

61. Hyundai's knowledge of the efficacy of immobilizers in preventing vehicle theft is also evidenced by the fact that, as early as 2007, Hyundai sought to add an immobilizer to its Azera model.⁴ In petitioning the federal government for an exemption to certain parts-making requirements of the Theft Prevention Standard (49 C.F.R. part 51), Hyundai represented that immobilizers had reduced the rates of vehicle thefts on other vehicle models by between 58 and 80 percent.⁵

62. Upon information and belief, Defendants have also known of the unusually high rate of thefts experienced by Subject Vehicles for many years,

² See Petition for Exemption from the Vehicle Theft Prevention Standard; Hyundai-Kia America Technical Center, Inc., 75 Fed. Reg. 1447, 1448 (Jan. 11, 2010).

³ *Id.*

⁴ See Petition for Exemption from the Vehicle Theft Prevention Standard; Hyundai-Kia America Technical Center, Inc., 72 Fed. Reg. 39661, 39661 (July 19, 2007).

⁵ *Id.* at 39662.

1 through scores of customer complaints relayed directly, through their dealers,
 2 and/or through relevant government agencies. Yet, Defendants continued to sell
 3 dangerous and defective Vehicles that lack an immobilizer or other anti-theft
 4 feature or design element sufficient to satisfy FMVSS 114. Defendants failed to
 5 warn consumers of the severe risk of theft that resulted from the lack of compliance
 6 with FMVSS 114.

7 63. Only when the problem became too large to ignore did Defendants
 8 decide to introduce immobilizers as a standard feature in all new vehicles going
 9 forward and announced efforts toward a future software patch that supposedly may
 10 help reduce the rate of vehicle thefts in at least some Subject Vehicles. But the
 11 Plaintiffs remain on the hook for all damages and expenses resulting from
 12 Defendants' wrongful actions.

13 64. Plaintiffs issue and underwrite policies of automobile and property
 14 insurance.

15 65. The Subject Vehicles' noncompliance with FMVSS 114 caused
 16 Plaintiffs' insureds to suffer property damage, including the loss of use thereof and
 17 other related damages. As a result, Plaintiffs' insureds made claims under policies
 18 of insurance held with the Plaintiffs which were investigated and paid by Plaintiffs
 19 to its insureds per the applicable policy terms.

20 66. By virtue of its claim payments for amounts in excess of this Court's
 21 jurisdiction, Plaintiffs are now legally, equitably, and contractually subrogated to
 22 the rights, interests and claims of its insureds against all responsible third parties,
 23 including the Defendants herein, and have also incurred, and will continue to incur,
 24 damages in its own right.

25 **COUNT I**

26 **BREACH OF WARRANTY**

27 67. Plaintiffs incorporate by reference each preceding and succeeding
 28

1 paragraph as though fully set forth at length herein.

2 68. Plaintiffs are informed and believe and thereupon allege that at the
3 time of its insureds' purchases of the Subject Vehicles from the Defendants and
4 each of them, said Defendants expressly and impliedly warranted that the Subject
5 Vehicles would be free of defects; would be safe for their intended use and would
6 be manufactured, designed, assembled and offered to the Insureds as merchantable
7 and fit for the ordinary purposes for which they were sold. However, the Subject
8 Vehicles were not fit for their ordinary purpose of providing reasonably reliable
9 and safe transportation at the time of sale or thereafter because, *inter alia*, the
10 defective Subject Vehicles lacked any anti-theft features or design elements to
11 provide an adequate theft deterrent, or sufficient to satisfy FMVSS 114, resulting
12 in a severe and highly dangerous risk of vehicle theft. Therefore, the Subject
13 Vehicles were not fit for their particular purpose of providing safe and reliable
14 transportation.

15 69. Defendants' warranties were designed and intended for the benefit of
16 the Plaintiffs' insureds as ultimate consumers of the Subject Vehicles.

17 70. Plaintiffs' insureds relied on the existence and length of the implied
18 warranties in deciding whether to purchase or lease the Subject Vehicles.

19 71. Contrary to the applicable express and implied warranties, the Subject
20 Vehicles at the time of sale and thereafter were not fit for their ordinary and
21 intended purpose of providing Plaintiffs' insureds with reliable, durable, and safe
22 transportation. Instead, the Subject Vehicles suffer from a defective design(s)
23 and/or manufacturing defect(s) that render them vulnerable to an abnormally high
24 risk of theft.

25 72. Defendants' actions, as complained of herein, breached the implied
26 and/or express warranties that the Subject Vehicles were of merchantable quality and
27 fit for such use.
28

1 73. As a direct and proximate result of Defendants' breach of their express
2 and/or implied warranties, Plaintiffs' insureds suffered property damage, including
3 the loss of use thereof, causing them to sustain damages for which the Defendants
4 and each of them are liable.

5 **COUNT II**
6 **NEGLIGENCE**

7 74. Plaintiffs incorporate by reference each preceding and succeeding
8 paragraph as if fully set forth at length herein.

9 75. Defendants manufactured, distributed and sold the Subject Vehicles.

10 76. Defendants violated applicable industry standards and otherwise
11 failed to exercise reasonable care in connection with their manufacture, distribution
12 and sale of the Subject Vehicles.

13 77. Further, Defendants made negligent misrepresentations to Plaintiffs'
14 insureds concerning the safety, quality, and legal compliance of the Subject
15 Vehicles that were not true or reasonable to believe and which they intended
16 Plaintiffs' insureds to rely upon, and Plaintiffs insureds did reasonably rely upon
17 these misrepresentations.

18 78. The Defendants' violation of their duties under applicable law
19 included their negligent misrepresentations, and failure to comply with federal
20 regulatory requirements to equip their vehicles with mandatory anti-theft
21 protection that complies with the requirements of FMVSS 114, as a result whereof
22 Plaintiffs' insureds suffered property damage, including the loss of use thereof,
23 together with other damages for which the Defendants are liable.

24 **COUNT III**
25 **NEGLIGENT FAILURE TO WARN**

26 79. Plaintiffs incorporate by reference each preceding and succeeding
27 paragraph as if fully set forth at length herein.
28

1 80. Defendants manufactured, distributed, and sold the Subject Vehicles.

2 81. The Subject Vehicles sold to Plaintiffs and Plaintiffs' insureds
3 insureds:

- 4 i. were not merchantable;
- 5 ii. were not reasonably suited for the intended use for which they
6 were sold; and
- 7 iii. were in defective and unreasonably dangerous condition at the
8 time of sale, by reason of the design of the Subject Vehicles.

9 82. Defendants owed the Plaintiffs' insureds a duty to warn with respect
10 to dangers and risks associated with the ordinary and foreseeable use of the Subject
11 Vehicles, particularly when such risks arose from latent and hidden defects of
12 design that could not be detected by the Plaintiffs' insureds in the exercise of any
13 reasonable care.

14 83. At all relevant times, including at the time of sale, Defendants knew
15 that the Subject Vehicles were defective because the lack of an immobilizer or
16 other anti-theft features or design elements sufficient to comply with FMVSS 114
17 would create a dangerous risk of vehicle theft, a risk to the safety of consumers
18 and the public, and a risk of property damage and loss.

19 84. Defendants breached their duty owed to the Plaintiffs' insureds by
20 completely failing to provide them with any warnings with respect to the dangers
21 and risks of vehicle thefts and harm to consumers, the public, and property directly
22 resulting from the design of the Subject Vehicles, including the lack of anti-theft
23 features and/or design elements that complied with FMVSS 114.

24 85. The failure to warn Plaintiffs' insureds of the dangers and risks
25 caused by noncompliance with FMVSS 114 was unreasonable, and Defendants'
26 failure to warn was the result of a lack of due care and ordinary diligence.

27 86. Defendants' failure to warn Plaintiffs' insureds regarding the
28

1 defective and unreasonably dangerous condition of the Subject Vehicles
2 proximately caused damage to the Plaintiffs' insureds resulting from vehicle thefts.

3 87. Defendants are liable for negligent failure to warn in tort for the
4 damages caused by the Subject Vehicles.

5 88. Defendants owe a duty to consumers not to sell dangerous products
6 that create severe risks of vehicle theft, property damage, and harm to the safety of
7 consumers and the public, and to warn consumers of such risks. This duty arises
8 under applicable law and is independent of any contractual obligation.

9 89. As a direct and proximate result of Defendants' negligent failure to
10 warn Plaintiffs' insureds suffered property damage, including the loss of use
11 thereof, and other damages for which Defendants, and each of them, are liable.

12 **COUNT IV**

13 **UNJUST ENRICHMENT**

14 90. Plaintiffs incorporate by reference each preceding and succeeding
15 paragraph as though fully set forth at length herein.

16 91. Plaintiffs' insureds conferred monetary benefits upon the Defendants
17 when the purchased or leased the Subject Vehicles.

18 92. The Defendants were aware of and possessed knowledge of said
19 monetary benefits.

20 93. The Defendants charged and received from Plaintiffs' insureds the
21 benefit of a higher price for the Subject Vehicles, in light of the failure of the
22 Subject Vehicles to comply with FMVSS 114, the increased risk of vehicle theft,
23 and any of the Defendants' wrongful acts or omissions to act.

24 94. The Defendants have continued to be unjustly enriched at the
25 expense of Plaintiffs' insureds, and their retention of this benefit is inequitable.

26 95. Plaintiffs seek all available equitable relief, including but not limited
27 to restitution in the amount of the benefit conferred on the Defendants as a result
28

1 of their wrongful acts or omissions to act.

2
3 **COUNT V**

4 **VIOLATIONS OF THE CALIFORNIA SONG-BEVERLY ACT; CAL.**

5 **CIV. CODE §§ 1791 *ET SEQ.***

6 96. Plaintiffs incorporate by reference each preceding and succeeding
7 paragraph as though fully set forth at length herein.

8 97. For the purposes of this Count VI only, the definition of “Subject
9 Vehicles” is restricted to those vehicles which were sold to Plaintiffs’ insureds
10 within the State of California.

11 98. At all relevant times, the Defendants were manufactures, distributors,
12 warrantors, and sellers of the Subject Vehicles, and they knew or should have
13 known of the specific use for which the Subject Vehicles were purchased.

14 99. Defendants provided Plaintiffs’ insureds with the implied warranties
15 that the vehicles were merchantable and fit for the ordinary purposes for which the
16 vehicles were sold.

17 100. The Subject Vehicles were not merchantable or fit for their ordinary
18 purpose because they contained an inherent defective condition at the time of sale
19 as a result of their failure to contain sufficient or adequate anti-theft or safety
20 devices.

21 101. The Defendants’ actions or omissions to act, as complained-of
22 herein, breached the implied warranties that the vehicles were merchantable and
23 fit for their ordinary purpose in violation of California Civil Code §§ 1792 and
24 179.1.

25 102. As a direct and proximate result of the Defendants’ breach of their
26 implied warranties, Plaintiffs’ insureds suffered property damage, including the
27 loss of use thereof and causing other related damages.
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury on all claims for which a jury trial is authorized.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against all Defendants and each of them as set forth below.

- a. For payment to the Plaintiffs for reimbursement for all damages resulting from the replacement or repair of the defective products, in an amount to be proven at trial;
- b. For payment to the Plaintiffs of all damages resulting from property damage caused by the Defendants' defective products, in an amount to be proven at trial;
- c. For interest as provided by law, including but not limited to pre-judgment and post-judgment interest as provided by rule or statute;
- d. For restitution and award of reasonable attorneys' fees and costs, as authorized by law, and
- e. For such other and further relief as this Court may deem just, equitable, or proper.

Dated: June 5, 2023

GROTEFELD HOFFMANN, LLP

/s/ Adam M. Romney
Adam M. Romney
Attorneys for Plaintiffs